IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.MC.No. 2984 of 2007()

CC.756/2007 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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PETITIONER: ACCUSED

1. MAHESH SINHA,AGED 30 YEARS,
   TC 2/2155 (10) SRUTHI AN -226
   ADARSH NAGAR, PATTOM,THIRUVANANTHAPURAM.

2. BOBY SINHA,AGED 69 YEARS,
   TC 2/2155 (10) SRUTHI AN -226
   ADARSH NAGAR, PATTOM,THIRUVANANTHAPURAM

BY ADV. SRI.K.RAJESH KANNAN
SMT.MAJIDA.S

RESPONDENTS: COMPLAINANT & STATE

1. HABSIBA,
   KRIPA SADAN,PALACE VIEW LANE,
   PATTOM,THIRUVANANTHAPURAM.

2. STATE OF KERALA,
   REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2984 Of 2007

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Dated this the 27th day of September, 2007

ORDER

The petitioners are accused in a prosecution under Section 498A IPC. They are husband and mother in law of the defacto complainant. Complaint has been filed by the mother of the wife of the 1st petitioner. Cognizance has been taken by the learned Magistrate. The petitioners have already appeared before the court below and have been enlarged on bail. The petitioners have rushed to this Court with this petition with a prayer that powers under Section 482 may be invoked to quash the proceedings against the petitioners.

2. Marriage is admitted. Some strain in the martimony is not disputed. The contention before me is that marriage is not consummated for various reasons. Proceedings are pending before the Matrimonial Court also. It is in these background that the mother of the bride had gone before the Chief Judicial Magistrate Court and filed a complaint. In such complaint, the sworn statement of the wife has already been recorded, it is not disputed.

3. Allegations are raised in the complaint of alleged cruelty. Details are narrated in the complaint. It will be in apposite to embark on a detailed discussion on the acceptability of the allegations raised. I shall summarize by stating that there is no contention that the allegations will not constitute an offence. There is no contention that there is any legal bar against the cognizance been taken. The short and very contention raised before me is that the allegations raised in the complaint cannot be accepted. The allegations are false. They are made only as a retaliation against the matrimonial proceedings already initiated by the husband before the Matrimonial Court. It is in these grounds that the prayer is made that the complaint may be quashed.

4. The learned counsel for the petitioners impassionately urges that Section 498A is more being misused than used. The counsel submits that the Courts must be hence very careful and cautious before a complaint under Section 498A IPC is admitted.

5. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to invoke and

exercise. The jurisdiction which is sought to be invoked is the extraordinary inherent jurisdiction available under Sec.482 Cr.P.C. It is by now trite that such jurisdiction has to be invoked sparingly and in exceptional cases, only in aid of justice. Such jurisdiction is certainly not to be invoked as a matter of course. Has there been failure of justice? Has there been an abuse of process of the Court? These are the crucial questions that the Court will consider when the prayer is made at the threshold to quash the proceedings by invoking the extraordinary inherent jurisdiction under Sec.482 Cr.P.C.

6. It is by now trite that invoking powers under Section 482, this Court cannot ordinarily attempt to resolve disputed questions of facts. I shall carefully avoid any detailed discussions on merits about the acceptability of the allegations and the credibility of the materials placed before the Court. Suffice it to say that on an anxious consideration of all the relevant inputs, I find absolutely nothing to sail to the conclusion that initiation of the proceedings result in failure or miscarriage of justice or abuse of process of the Court. I shall venture not to express any opinion on the

criticism that the allegations cannot or ought not to be accepted. That consideration must be made by the Court at later stages in the course of the inquiry and trial.

7. The Code of Criminal Procedure provides for premature termination of the proceedings when such proceedings are initiated without any valid justification. Discharge can be Claimed in a private complaint like the instant one, under Section 245(2) if the allegations are groundless and under Sec. 245(1) Cr.P.C after pre-charge enquiry, if the allegations do not establish a case which, if unrebutted, would warrant conviction. I am satisfied in these circumstances that the petitioners must be relegated to raise their contentions before the learned Magistrate to claim discharge/ acquittal at later stages of the inquiry and trial. Of course the petitioner shall be entitled to claim discharge under Section245(2) and 245(1) Cr.P.C. and if that be not successful, acquittal at later stages.

8. The learned counsel for the petitioners submits that the 2nd petitioner, a woman aged 69 years is put to unnecessary sufferings because of the pendency of the proceedings . It is for

the petitioner to apply for exemption before the learned Magistrate to exempt the 2nd petitioner a woman aged 69 years from personal appearance. The 2nd petitioner's prayer for exemption from personal appearance must be considered favourably by the learned Magistrate till such stage at which such appearance is absolutely necessary, that is, If such charges are to be framed at the stage of Sec.246 Cr.P.C.

This Crl.M.C is hence dismissed with the above observation.

(R.BASANT, JUDGE)

sj